

Notice of Allowability

Application No.

10/656,533

Examiner

June Hwu

Applicant(s)

MCKENRY, MICHAEL

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed December 14, 2004.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 04 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

The amendment and declaration filed December 14, 2004 have been acknowledged.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

In the substitute specification:

A. Paragraph [04], the recitations with regard to the cultivar names within double quotes "Ramsey" and "Schwarzmann" have been changed to single quotes.

B. Paragraph [23], the cultivar RS-9 has been changed to include single quotes.

Reason for Allowance

The information regarding the cultivar RS-9 was described in the FPMS (Foundation Plant Materials Service) Grape Program Newsletter (October 2001) and the Hashim reference (Nov./Dec. 2001) as a possible offer for sale or public use in this country, more than one year prior to filing of this instant application. A sale of the invention in this country, more than one year before the date of the application would constitute a bar under 35 USC 102(b).

In the response filed December 14, 2004, Applicant states that FPMS and OTT (Office of Technology Transfer) are wholly owned division of the University of California (the assignee of this instant application). Applicant states that FPMS receives plants developed by the University of California and conducts test for pathogen and pest contamination. Furthermore, Applicant states that FPMS also license the plants from the University to other nurseries with

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approval from OTT. OTT also license patented varieties to other nurseries. See page 4 of reply.

Applicant states that the instant cultivar had never been publicly available through FPMS without consent from OTT, and the earliest release of the instant cultivar occurred August 27, 2003, less than one year prior to the filing of this application. In addition, Applicant states that the earliest release happened on July 28, 2003 by the breeder to other parties for test purposes, less than one year prior to the filing of this instant application. Moreover, Applicant states that FPMS did not sell or donated the claimed cultivar to California Foundation. See page 5 of reply.

Applicant states that the FPMS newsletter on page 4 stating "Nurseries interested in becoming licensed to propagate these varieties should contact Melissa Kimball at OTT phone..." was not an offer for sale. Applicant further states that the instant cultivar was never released to nurseries more than one year prior to the filing date of this plant application.

Applicant states that the information regarding the instant cultivar in the Hashim reference was concerning the testing of different grapevine rootstock. The experiment occurred at the University of California and was not in public use. See page 6 of reply. As a result, there is no evidence of the instant plant being in public use or on sale in this country, more than one year prior to the effective filing date of this instant application.

The specification provides as complete a botanical description as reasonably possible of the claimed plant. The completeness of the description is sufficient to distinguish this new plant from the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

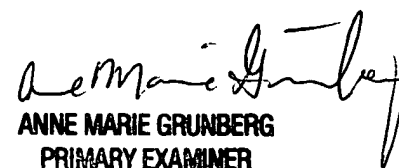
Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH


ANNE MARIE GRUNBERG
PRIMARY EXAMINER